United Nations

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 735

Case No. 790: GOMEZ

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Luis de Posadas Montero, Vice-President, presiding; Mr. Mikuin Leliel Balanda; Mr. Hubert Thierry;

Whereas, on 19 June 1990, 6 October 1990, 27 November 1993, and 14 January 1994, Mary Anne Gomez, a former staff member of the United Nations High Commissioner for Refugees, hereinafter referred to as UNHCR, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 March 1994, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal *inter alia*:

> "1. I am seeking reinstatement into UNHCR Singapore as it was an administrative decision brought on by the Representative, Mr. M. H. Khan to dismiss me, by his constant intimidation and harassment. On humanitarian grounds, I am pleading for mercy and compassion to be shown.
>
> ...
>
> 4. I am seeking compensation from UNHCR for my wrongful dismissal.

...

6. I am seeking the upgrading of my position since 1983 as I have been denied this by Mr. Shashi Tharoor, the former Representative.

...

9. I would like to request that I be assigned to do Resettlement in the Resettlement Section as I am familiar with the work, if I cannot be reinstated."

Whereas the Respondent filed his answer on 28 September 1994;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNHCR in the Sub-Office for Singapore, on 15 November 1979 as a Clerk/Typist at the G-3 level, on a short-term appointment. With effect from 1 June 1981, the Applicant was granted a fixed-term appointment as a Secretary/Senior Clerk at the G-5 level, which was successively renewed until 1 January 1983, when she was granted an indefinite appointment. She separated from service with effect from 31 August 1986.

In a letter dated 30 June 1986, the Applicant informed the Representative, UNHCR Singapore, of her resignation as follows:

"This is to inform you that I wish to terminate my service with UNHCR with effect from 31 August 1986, for personal reasons.

I would like to express my sincere thanks and appreciation to all those I worked with for the rewarding and fulfilling experience I gained with UNHCR during the past 6½ years of my employment. I wish also to thank all the staff for the support I received."

Following the Applicant's separation from service, in a letter dated 26 February 1987, the UNHCR Representative advised her that he had received a report from his staff that on the morning of 24 February 1987, she had entered the office and without permission had removed

a document from the files and copied it on the office machine. The Representative informed the Applicant, "since your resignation from this office, you are no longer authorized to enter the premises, handle the files or use any office machinery without due permission from the staff". He also noted complaints that he had received from staff concerning telephone calls from the Applicant and requested that she "henceforth desist".

In a reply dated 29 February 1987, the Applicant protested the contents of the Representative's letter of 26 February, contending that she had visited the office on 24 February and requested to see her file, which the Representative's secretary had helped her to find and handed to her. She stated that the document she had copied was a personal document that she had brought with her and requested permission from the secretary to copy. She further stated that the Representative had engaged in "violent and abusive behaviour" towards her prior to her separation from service. Finally, she demanded a written apology "for accusing [her] of 'intruding' into the office and making false allegations against [her]".

In a reply dated 4 March 1987, the Representative informed the Applicant that he had further interviewed his staff regarding the incident of 24 February. He confirmed that she had addressed one staff member while he was on the phone but stated that her "question was not a request for permission to handle the files, nor did the staff member's answering gestures of the hand constitute such permission". He further stated that she had ignored the staff member who asked her what she was doing and whether she could help. Finally, he requested that the Applicant cease making telephone calls to his home and that any requests for assistance from the office be directed to his secretary.

Following this exchange of correspondence, the Applicant addressed letters to several officials at UNHCR Headquarters in Geneva, in which she reiterated her request for an apology from the UNHCR Representative in Singapore. In a reply dated 10 June 1987, the Head of Personnel Service stated "on behalf of UNHCR, I would like to say that I am very sorry that you feel that you have been treated incorrectly by the High Commissioner's Representative in Singapore". The Applicant advised the Head of Personnel Service, in a

letter dated 22 June 1987, that she intended "to pursue the matter by appealing to UNHCR HQ to urge the Representative to issue a formal letter of apology". In reply to a further letter from the Applicant, dated 28 August 1987, the Head of Personnel Service informed her "I am not in a position to undertake to obtain for you a letter of apology, and I suggest, as I previously have, that you consider the matter closed."

Following further correspondence with the Staff Council and the Head of Personnel Service, the Applicant addressed letters of appeal, dated 10 June, 17 August and 30 September 1988 to the High Commissioner's Office, requesting the High Commissioner's intervention in getting a letter of apology from the Representative in Singapore. On 28 October 1988, the Applicant appealed to the Secretary-General, stating that she was "harassed, provoked, abused and was even literally forced to resign by the then Representative over a trivial issue in August 1986". She requested a formal letter of apology from the Representative, and his resignation from UNHCR as well as the resignation of his secretary. She also requested reinstatement and the upgrading of her position, which she stated had been denied to her as a result of prejudice.

In a reply on behalf of the Secretary-General, dated 8 December 1988, the Director of Staff Administration and Training Division rejected the Applicant's requests, noting that "the time-limits for appealing any administrative decision arising out of your contract of employment have long since expired". He further noted that her request for the resignations of two staff members was "unacceptable" and that as the Applicant had resigned, "there is no question of your 'reinstatement'". As she did not encumber any post, he also advised her "there can be no question of 'upgrading'".

In a letter, dated 28 December 1988, the Applicant informed the Director, Staff Administration and Training Division, that she had been unaware of the deadlines for appealing administrative decisions to the Secretary-General, and appealed again for review. On 3 April 1989, the Applicant wrote again to the Secretary-General. On 10 March 1990, she wrote to the High Commissioner for Refugees. In a reply on his behalf, dated 26 March 1990,

the Head of Personnel Service noted that the matters involved had already been raised by the Applicant and responded to. On 2 April and 2 May 1990, the Applicant wrote again to the High Commissioner. Also on 2 May 1990, the Applicant wrote to the Office of Legal Affairs. On 24 May 1990, the Principal Legal Officer, General Legal Division, replied, informing the Applicant that her case was "a matter for UNHCR to decide". On 25 May 1990, the Applicant again wrote to the Secretary-General.

On 19 June 1990, the Applicant wrote to the Tribunal. In a reply dated 11 July 1990, the Executive Secretary informed the Applicant that an appeal to the Tribunal is receivable only after it has been considered by a joint appeals body, unless the Applicant and Secretary-General agree to direct submission of the appeal. On 21 August 1990, the Applicant lodged an appeal with the Joint Appeals Board (JAB). JAB adopted its report on 18 October 1993. Its considerations, conclusions and recommendations read as follows:

> "*Considerations*
>
> 15. The Panel considered its competence in receiving this appeal and recalled the terms of reference of the JAB under staff rule 111.2 (a): 'A staff member wishing to appeal an administrative decision ...' It decided to first discuss the question whether the resignation of the Appellant could be considered an administrative decision.
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> 16. It was the unanimous opinion of the Panel that a resignation was an act based on the exercise of a choice on the part of a staff member. Such wilful action could not be attributed to an administrative decision. The responsibility for the action rested with the staff member who had decided to resign.
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> 17. In the light of this finding the Panel did not consider other issues of receivability nor the merits of the case.
>
> *Conclusions and Recommendations*
>
> 18. The Panel *concludes* that the resignation of the Appellant is not an administrative decision on which an appeal could be based. Therefore, the appeal is outside the scope of the mandate of the JAB and not receivable.

19. The Panel makes *no recommendation* in support of this appeal."

On 5 November 1993, the Under-Secretary-General for Administration and Management transmitted the JAB report to the Applicant and advised her, *inter alia*, as follows:

> "[The Secretary-General] has taken note of the Board's conclusion that your resignation action was not an administrative decision on which an appeal could be based and that therefore your appeal was outside the scope of the mandate of the Joint Appeals Board and not receivable. He has also noted the Board's determination to make no recommendation in support of your appeal. Accordingly, the Secretary-General has decided to take no further action in respect of your case."

On 21 March 1994, the Applicant filed with the Tribunal the application referred to above.

Whereas the Applicant's principal contentions are:

1. Due to intimidation and harassment, the Applicant had no choice but to submit her letter of resignation. She did not realize the implications of her letter, which was a technical mistake.

2. The Applicant was a victim of discrimination by the Representative who incited racial tension and was prejudiced against minority groups, and who made false accusations against the Applicant.

Whereas the Respondent's principal contentions are:

1. A resignation is a separation from service initiated by a staff member, and cannot be considered as an administrative decision from which an appeal may be taken.

2. In any event, the Applicant's claims are time-barred under the United Nations Staff Regulations and Rules.

3. The Secretary-General's power to terminate the appointment of other staff members is not part of the contract of employment of the Applicant.

The Tribunal, having deliberated from 31 October to 21 November 1995, now pronounces the following judgement:

I. The Applicant was taken on at the Office of the United Nations High Commissioner for Refugees (UNHCR) in Singapore on 15 November 1979 as a clerk/typist at the G-3 level, on a short-term appointment. In June 1981, she obtained a fixed-term appointment which was successively renewed until January 1983 at which time she was granted a permanent contract. On 30 June 1986, she resigned for personal reasons with effect from 31 August of that same year.

II. Following an incident in which the Applicant entered UNHCR premises and handled the files without prior authorization, she received a letter from the UNHCR Representative in Singapore, reprimanding her for having "intruded" into the office and requesting that she refrain from such conduct in the future.

The Applicant took offence at that remark and demanded a written apology from the UNHCR Representative. On 28 October 1988, the Applicant wrote to the Secretary-General requesting reinstatement, maintaining that she had been compelled to resign because she was being intimidated and harassed by her supervisor whose behaviour revealed ethnic or religious discrimination. In addition to requesting the upgrading of her former position, she called for the resignation of the UNHCR Representative in Singapore and that of his secretary, whom she considered to have instigated the lies which had been spread about her. The Secretary-General, in a letter dated 8 December 1988, rejected the Applicant's claims.

The Applicant lodged an appeal with the Joint Appeals Board. The latter unanimously concluded that her appeal was not receivable, since a resignation was not an administrative decision, and the Secretary-General endorsed the recommendation. The Applicant then filed an application with the Tribunal.

III. In her application, the Applicant reiterated the claims she had made to the Joint Appeals Board and requested that she be reinstated and that her position be upgraded with retroactive effect. She further requested compensation for having been forced to resign and a letter of apology from the UNHCR Representative.

IV. The Respondent requested that the application be rejected, contending that it was not receivable given that the Applicant had resigned of her own free will. She had been unable to adequately substantiate her allegations against the former UNHCR Representative in Singapore. Her resignation was not an administrative decision giving rise to an appeal.

The Respondent added that the application was, moreover, time-barred under staff rule 111.2 (a) and staff regulation 11.1. Finally he requested that the request regarding the dismissal of other Secretariat staff should be rejected since that was not a matter within the Applicant's competence.

V. The Tribunal notes that in its report of 18 October 1993 the Joint Appeals Board decided, furthermore, in paragraphs 16 and 18:

> "16. It was the unanimous opinion of the Panel that a resignation was an act based on the exercise of a choice on the part of a staff member. Such wilful action could not be attributed to an administrative decision ...
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> ...
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> 18. The Panel concludes that the resignation of the Appellant is not an administrative decision on which an appeal could be based. Therefore, the appeal is

outside the scope of the mandate of the JAB and not receivable."

VI. The Tribunal agrees with the conclusion of the Joint Appeals Board that the application must be declared not receivable.

Moreover, the Tribunal concludes that the application is also time-barred.

VII. For the foregoing reasons, the Tribunal rejects the application.

(Signatures)

Luis de POSADAS MONTERO
Vice-President, Presiding

Mikuin Leliel BALANDA
Member

Hubert THIERRY
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary